

CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 05/27/03

AGENDA ITEM 7

WORK SESSION ITEM

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Approval of Variance PL-2003-0102 to Retain a 7-Foot Fence Where a Maximum of 6 Feet is Permitted – Paige Bennett (Applicant/Owner), David Velasquez (Appellant) – The Property is Located at 313 Bridgecreek Way

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution finding that the project is categorically exempt from environmental review, and upholding the appeal and denying the application, subject to the attached findings.

DISCUSSION:

The property is located in the Twin Bridges residential development where 6-foot-high rear and side yard fences were installed as a condition of the tracts. The applicant subsequently installed a solid board 7-foot-high fence along her rear and side property lines without the benefit of a building permit and which exceeds the maximum height of 6 feet allowed by the City's Zoning Ordinance. A nearby resident filed a complaint with the City's Community Preservation office regarding the height of the fence, and the applicant was asked to comply with City regulations. Consequently, the applicant filed an application for a variance to retain the fence.

The applicant sought approval of a Dog Fancier's permit four years ago and was given authorization to "foster" up to eight pit bull dogs by the City's Animal Services Manager. A Dog Fancier's permit may be issued after consideration of the adequacy of the property to accommodate the animals (takes into consideration size of parcel and breed of dogs), sanitation, and the ability of the individual to foster animals. The applicant states that a neighboring property owner to the rear asked her to install a higher fence for safety reasons. The applicant states that she was not aware of the 6-foot-high maximum fence height limit in the Zoning Ordinance nor the Twin Bridges Covenants, Conditions, and Restrictions (CC&Rs) as there are other properties in the neighborhood that have 7-foot-high fences. (The Twin Bridges CC&Rs require pre-approval by the Board's architectural committee before erecting improvements.) Several neighbors oppose the fence in that they believe it is an eyesore and decreases the value of their properties. They indicate the applicant should not be allowed to foster dogs there if a 7-foot fence is required to protect them from the dogs.


At its April 10, 2003 meeting, the Planning Commission (4:2) approved the application. Planning Commissioners who supported the variance indicated that the fostering of the dogs was a special circumstance that justified supporting the variance and the fence was put up to protect the neighborhood. A Planning Commissioner suggested amending the Zoning Ordinance as it pertains to fence height in light of privacy issues associated with larger, taller houses on smaller lots. The dissenting Planning Commissioners stated that there were no legal grounds for granting the variance and use of the property is not a special circumstance in making a finding for approval of a variance. Members of the public who spoke in support of the variance were primarily from a dog rescue organization who spoke on the ability of the applicant to foster dogs and the need for that service.

The appellant, who resides next door to the property at issue, states that there are no unique property circumstances, that no hardship would occur in limiting the fence to 6 feet, and that granting the variance gives the applicant a special privilege that has not been granted to others in the area. The site is typical of single-family lots throughout Hayward and there are no special circumstances applicable to the property. The appellant also indicates that he believes the fence, which is of abutting vertical boards with no decorative relief, is unsightly. Staff acknowledges that tall fences can be made more attractive when the top one foot is of a more decorative material (e.g., lattice) to provide visual relief. The appellant also objects to the dog fostering efforts due to barking.

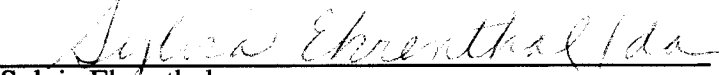
The applicant stated that there are over two dozen homes in the area that have fence extensions above the 6-foot-high common property fence and inferred that she is being deprived of privileges enjoyed by other property owners in the area. However, staff observed only one instance in Twin Bridges where a fence located between a house and a side property line consists of a 7-foot \pm lattice screen and another instance where there was a 7-foot-high gate between a house and the side property line. Also, no variances have been approved to allow fences greater than 6 feet high in the Twin Bridges development.

Other homeowners with and without dogs must comply with the maximum fence height established by the zoning ordinance. Furthermore, there are other measures that may be employed to keep dogs on the premises, such as constructing a barrier extending horizontally from a 6-foot fence, planting large prickly shrubs (such as holly, cacti, bougainvillea) adjacent to a 6-foot-high fence, containing the dogs with covered dog runs, or restraining the dogs on leashes. It should be pointed out that the CC&Rs of a subdivision can be more restrictive than City regulations. Therefore, should the City uphold the approval action of the Planning Commission, the Twin Bridges Homeowners' Association could still deny the request of the applicant to retain the fence. To date, the Homeowners' Association has not taken a position on the matter. Staff also points out that it is not known if the fence has been constructed to a standard that would meet the Uniform Building Code since no building permit was sought.

Prepared by:


Dyana Anderly, AICP
Planning Manager

Recommended by:


Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:


Jesus Armas, City Manager

Attachments: Exhibit A. Appellant's Letter, dated April 15, 2003
Exhibit B. Planning Commission Meeting Minutes and Staff Report, dated
April 10, 2003
Exhibit C. Typical Letter of Support
Draft Resolution

5/22/03

To: Planning Commission
c/o Carl Emura, Associate Planner

Tuesday, April 15, 2003

From: David R. Velasquez

Subject: Appeal to the granting of Variance No. PL-2003-0102

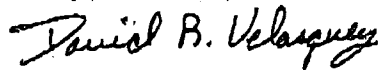
Sirs,

I wish to formally appeal the granting of Variance No. PL-2003-0102. I do not believe that the applicant fulfills any of the criteria that would allow the granting of a variance to the zoning ordinance.

1. The property on which the fence sits is the same as every other property in the development. There are no unique property circumstances that justify adding a seven-foot high fence where a maximum six-foot high fence is allowed.
2. There is no hardship incurred by enforcement of the zoning ordinance limiting fence height to six feet.
3. Granting of the variance gives special privilege to the applicant that has not been granted to others in the area.

Please let me know as soon as possible if my appeal is accepted and a hearing is set.

Thank you,



David R. Velasquez
Resident
317 Bridgecreek Way
Hayward, CA. 94544
(H) 510-429-0128
(W) 650-696-5972

MINUTES



REGULAR MEETING OF THE PLANNING
COMMISSION, CI. OF HAYWARD
Council Chambers
Thursday, April 10, 2003, 7:30 P.M.
777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Zermeno, McKillop, Sacks, Caveglia, Halliday
CHAIRPERSON Bogue
Absent: COMMISSIONER Thnay

Staff Members Present: Anderly, Conneely, Emura, Looney, Patenaude

General Public Present: Approximately 20

PUBLIC COMMENT

AGENDA

1. **Variance No. PL-2003-0102 – Page Bennett (Applicant/Owner) – Request to Allow a 7-Foot Fence Along the Side and Rear Property Lines – The Property is Located at 313 Bridgecreek Way**
2. **Administrative Use Permit No. PL-2003-0030 – Institute of Divine Metaphysical Research/Alex Bailey (Applicant) / Loube, et. al. (Owner) – Request to Continue Operating a Religious Facility in the Vermont Plaza Shopping Center – The Property is Located at 22636 Vermont Street**
3. **Site Plan Review Application No. 2003-0125 – Standard Pacific Homes (Applicant) / Acacia Credit Fund 7, LLC (Owner) - Request for Approval of the Design of 27 Single-Story Single-Family Dwellings, including a Request for a Variance of Rear Yards and Lot Coverage – The Property is Located at 28905 Hesperian Boulevard in Phases I and II of Eden Shores (Commonly Known as Oliver West)**
4. **Text Change Application PL-2003-0175 – Initiated by the Planning Director – Request for an Amendment to the Zoning Ordinance Relative to Expiration of Discretionary Permits and Miscellaneous Clarifications and Corrections, Including Definition of a Garage, Bedroom, Home Occupation, Household Pets and Livestock**

PUBLIC HEARINGS

1. **Variance No. PL-2003-0102 – Page Bennett (Applicant/Owner) – Request to Allow a 7-Foot Fence Along the Side and Rear Property Lines – The Property is Located at 313 Bridgecreek Way**

Associate Planner Emura made the staff report. He indicated that the property was located within the Twin Bridges residential development. The applicant has a dog fancier permit and keeps up to 4-8 dogs on her property. She fosters these dogs. He noted that staff cannot support the variance because there are no special circumstances to allow for it. He emphasized that the issue is the variance for a 7-foot fence and not her permit to keep dogs on the property. He commented that staff received seven emails supporting her efforts as well as the fence and four emails from neighbors not supporting the dogs and fence.

Commissioner Zermeño asked about the CC&R's for the property and why the violation is not internal.

Associate Planner Emura said this is in response to City staff noting the violation through Community Preservation as a result of an anonymous call.

Commissioner Caveglia asked about the artificial barrier described by Mr. Emura. The fence was in response to her need for fostering dogs.

Associate Planner Emura described a horizontal barrier to contain the dogs in lieu of a 7-foot fence.

Planning Manager Anderly added that the South of 92 project is using similar barriers for keeping domestic animals and pets out of the wildlife habitat.

Commissioner Halliday commented that the Homeowners Board was divided on the issue and noted that a 7-foot fence would violate the City Zoning Ordinance.

Commissioner McKillop asked about latticework above a 6-foot fence and whether or not this would be legal or illegal.

The public hearing opened at 7:42 p.m.

Paige Bennett, applicant, said she erected the fence because a neighbor was concerned about the dogs leaping the fence. She described her present situation as creating a safe environment for animals and people. After bringing the issue to the Home Owners Association, they elected an architectural board to review the fencing issue. The issue has come up with other residents as well. She noted the original fence on the property is only 5-feet 10-inches. She added that the zoning ordinance should be changed to meet the needs of the community since many people in the community are already in violation of the ordinance. Others have erected higher fences on their property for both security and privacy.

Commissioner Caveglia asked about a letter contained in the staff report saying neighbors are afraid of vicious dogs jumping over the fence.

Ms. Bennett described most of her dogs as over 4 months of age. She added that there had been two activities reported to animal control regarding her property. One was in March of 2001, some people were afraid of the dogs on her property, and the second in November 2001, when there was a dog fight.

Commissioner Caveglia then asked about staff's proposal of a horizontal barrier.



Ms. Bennett agreed that it might be possible. She then emphasized that the fence was erected at neighbor's request. She stated that it is not an issue with the fencing but animals.

Commissioner Caveglia agreed that apparently other people in the neighborhood have the same issue. He agreed that it is a legitimate concern with privacy; the way houses are being clustered together so closely. He suggested they might look at changing the Ordinance.

Commissioner McKillop asked whether it was the neighbors to the back who objected.

Ms. Bennett said one does not, and the other one requested it. She said it also works as a sound barrier since the animals get set off with the noise created by the children in the neighborhood. She added that she does not want any of them to worry about the animals.

Commissioner Halliday said when she was asked to put in the fence, did she realize the CC&R's did not approve the fence.

Ms. Bennett stated that the Home Owner's Association was all but non-existent at that point. She added that over two-dozen homes in the area have fence extensions. In late March of this year, the architectural board was appointed to discuss changes in the architectural guidelines. Since that was done so recently, they have not actually done any work at this point.

Commissioner Halliday asked whether she would be willing to take the fence down to 6-feet, or perhaps there might be other solutions.

Ms. Bennett said she did not think the animals could make it over the fence.

Dr. Kim Burcovitz, the veterinarian who sees the dogs, said the issue seems to be the dogs. She said none is really vicious nor have they had to be muzzled any of these dogs. Ms. Bennett is training them to be family dogs. She noted the fostering care they are given.

Vanessa Beck commented that the real issue seems to be Ms. Bennett's fostering of dogs. She added that she, too, had seen other fences in the neighborhood and reminded everyone that this was an anonymous complaint. She added that Ms. Bennett keeps a model foster home, noting that the 7-foot fence is an extra foot of security. She asked the Commission to consider leaving it.

Kim Schaefer, President of the Fremont Animal shelter, talked about Ms. Bennett. She described her as a responsible pet owner. She noted that the fence is necessary. She noted that Ms. Bennett would not have the care of aggressive dogs.

Gerry Gallagher said he was a 40-year resident of Hayward and a member of Friends of Fairmont Animal Shelter. He said that it is a small shelter mainly to serve the unincorporated areas. He noted that there are three options for animals that are brought to the shelter: adoption, foster home, or euthanasia. Ms. Bennett performs a great service by fostering the dogs, which are brought into the shelter.

Commissioner Halliday said the issue has come up before and other circumstances. She noted that this is a citywide ordinance. She asked Mr. Gallagher whether he was a foster caregiver as well.

Mr. Gallagher said he was, and has a 6-foot fence because he fosters cats.

Steve Sapontzis, president of Hayward Friends of Animals, said findings could be made to allow the fence or special circumstances. He added that this is not a special privilege since Ms. Bennett is not doing this for personal interests, or private needs. It seems the special circumstances are that she is a volunteer to foster dogs. He commented that these are Pit bulls and noted that she makes sure they are safe dogs. She put up the fence for the psychological concern of the neighbors. These all could be construed as special circumstances.

Kathy Harris, one of the Fairmont volunteers, stated that the fence for the neighbors. Ms. Bennett is a responsible person. She noted that it is only a one-foot extension for the fence. It is also privacy for neighbors.

Jeanne Gocker, Friends of Hayward Animals, discussed spaying and neutering pit bulls. She said this is the number one animal put down in the City of Hayward. She noted that people are afraid of them for no reason. The Friends has received a donation to help spay or neuter 100 pit bulls. Dr. Hackler on Grove Way in Castro Valley. She noted how exceptional Ms. Bennett is. She looks for the safety of people in the community. She does all the work. If one of the animals is not suited to domestication, she will not keep it. Ms. Cocker said she would hope the Commission would grant the variance to serve the community.

Justine Slusarski - Explained that there are various reasons to have higher fences. She commented that anonymous is trying to make an example of Ms. Bennett. She said she is a neighbor two doors away. The fences help neighbors to feel more secure. The area is riddled with crime, particularly the constant mail theft. She said there are numerous strange cars parked in Twin Bridges. She noted that perhaps if everyone had 7-foot fences maybe the criminals would not feel so confident. She noted that the quality of material used by the builder on the fences was the lowest grade. She added that the quality of this fence is very good. It would be a mistake to take this fence down. The quality of the standard fencing is substandard and is a threat to small children and animals.

Linda Bristow, another animal lover, said it was not a special privilege for Ms. Bennett, it is merely the ability to grant her the tools for the great job she is doing. She added that it should be the position of the Commission to act for what is good for the community and good for quality of life. She added that she does know that variances are given.

Susan Perry, volunteer for Friends of Fairmont, said that it would not be fair to ask Ms. Bennett to make a change since she was attempting to be a good neighbor. It would also be expensive. She asked the Commission to allow the variance since Ms. Bennett is providing a service to the community. She noted that there would be a problem with staff's suggestion of the extension and a ditch since the yard is such a narrow space. This kind of solution would be intrusive, not reasonable or practical. This fence is probably an up-grade.

Carol Fox, a neighbor who lives two-doors away, said Ms. Bennett is a responsible person, who came under attack because of the dogs. She described them as abandoned throwaway



animals. As a concerned and thoughtful resident, she chose to build the fence and was thinking of the safety of the animals and residents. She noted that Ms. Bennett voluntarily and carefully attends to these animals. Other fences in the neighborhood also violate the rules. She commented that there is greater privacy from having the higher fence. She said she was considering a lattice on the top of her own fence.

Another neighbor said she has no special interest in this issue. However, with the standard 6-foot fence and her 2-year old child, he could launch any toy over the fence. Ms. Bennett's fence is safe; she encouraged a variance for all of Hayward for greater privacy.

Kathy Watkins noted that if you don't grant her a variance, everyone else would have to take down their higher fences as well.

The public hearing was closed at 8:27 p.m.

Commissioner Caveglia moved, seconded by Commissioner Zermeño, to approve the variance on its own benefit. He said he would argue special circumstances do exist. She has a dog fancier permit. He said it would be contradictory if we don't allow it since this is within the nature of what she is doing. Beyond that he commented that the whole ordinance should be brought forward. He noted that since they are permitting smaller footprints for the size of homes, the need for privacy is there. He said the Commissioner should grant her the variance and change the ordinance.

Commissioner Sacks said she disagreed with the motion. She mentioned that she lives in a neighborhood that has no fences. She noted that the City of Hayward has zoning, rules, etc. One of them says 6-foot fences at the highest. Twin Bridges was built to comply with that rule. She added that it was not clear that those neighbors who requested her to build a 7-foot fence even knew the rule was 6-foot. The other issue is that although the applicant has a dog fancier's license or permit, it was issued when there was a 6-foot fence. She stated that nothing convinces her to throw out the rule. Even looking at a broader context, she said she does not see that it should be granted but should be denied.

Commissioner Halliday asked about the historical background of the 6-foot rule.

Planning Manager Anderly stated that anything approved above a 6-foot fence needs a building permit. The 6-foot rule allows light and sunshine. She commented that a responsible fence builder would inform them of the requirement for a building permit.

Commissioner Halliday stated it is a really hard decision to make. On the one hand, she said, her heart is with the dogs and people who came here. However, the Commission would be granting this variance in violation of the CC&R's, City ordinances and the developer. She did think that use of the property would stand as a finding of approval. She then proposed a substitute motion. Allow the variance for a 1-year period and discuss it at that time as to whether it should be in force. She emphasized that it is important for the community to talk about this, and since they have just formed an architectural review board to discuss it, this

would give them time to review the applicant's situation. Maybe they will come together and want to change the rule. She suggested reviewing the over-all rules in newer neighborhoods. With the bigger and higher houses, 7-foot fences do not look so bad. The motion died for lack of a second.

Assistant City Attorney Conneely stated that fostering dogs is not a special circumstance in land use issues.

Commissioner McKillop said she did not have a problem with 6-foot fence ordinance but maybe should be revisited. She did note that the 7-foot fence was built to accommodate her neighbors.

Commissioner Zermeño said so many dogs might not belong in an urban suburban setting. However, Ms. Bennett was just protecting the neighborhood. He said he liked the one-year trial to sort out the solution to the 6-fence but did not realize a substitute motion needed a second. He then re-made the substitute motion allowing a 7' fence for a one-year trial. Commissioner Halliday seconded it.

Commissioner Caveglia said he would like to thank Ms. Bennett for her work fostering dogs. He said it is the ordinance caused the problem. There are special circumstances. He added he did not like the one-year trial since it keeps everything hanging. He added that one way to judge society is how well it treats its animals.

Commissioner Halliday asked for a clarification if there was not a majority vote.

Assistant City Attorney Conneely responded that if no motion is approved, the variance would be denied and the appellant could appeal to the City Council. Or, the issue could be held over to a future meeting. However, she added that Commissioner Thnay might be precluded from voting since it is his neighborhood.

Commissioner McKillop suggested both the City and the Homeowners Association could talk about the fence issue without tying to this applicant. It does not seem fair to hang her up for a year.

Chairperson Bogue commented that his major concern is that the City of Hayward ordinances require a maximum of 6-feet. When the CC&R's were created they were based on this expectation. This variance is a violation of that. He added that he would have a hard time supporting this motion. He added that he was concerned with keeping it around for one-year with the hope that someone might change the requirement. He said with the extension of time, perhaps the rule might be changed.

Commissioner Zermeño suggested that Ms. Bennett, appeal to the Home Owners Association and convince them the 7' fence is appropriate. He noted that it is not that big a deal. However, he added that perhaps the permit for this many dogs should not have been issued. Rather than penalizing the applicant, the one-year allowance would offer them the opportunity to resolve the issue.

Commissioner Caveglia suggested that one of the purposes of the Planning Commission is to grant variances. He commented that clearly this fence is not an eyesore. It is a social problem, the pit bull thing. Hayward society has brought these animals here. When they are abandoned



or abused, somebody has to pick those pieces up. Again, he thanked Ms. Bennett for her work in this area.

Commissioner Sacks said she did not agree with the premise that there was an underlying assumption that there will be a change in the City of Hayward ordinances. This is not a healthy situation.

The Substitute Motion failed by the following vote:

The motion **failed** by the following vote:

AYES:	COMMISSIONERS Halliday, Zermeno
NOES:	COMMISSIONERS McKillop, Caveglia, Sacks
	CHAIRPERSON Bogue
ABSENT:	Thnay
ABSTAIN:	None

Discussion then reverted back to the original motion.

Chairperson Bogue said the use on the property could not be considered special circumstances.

Commissioner Halliday emphasized that they still had a decision to make. She then assumed the original complainant would bring it back to the City Council on appeal. She said she felt that communities needed to come together and talk about these things. She added that she would vote for the motion.

Chairperson Bogue said he would vote against the motion for legal reasons. This fence is illegal and there were not grounds for another variance. He emphasized, either change them all or find a reason not to.

Commissioner Zermeno said he could not support so many dogs but since the animal control seemed satisfied and there is sufficient support for serving a community and neighborhood need, he would support the motion.

Commissioner McKillop noted that this is not a pleasant and easy process. The City and the neighborhoods need to talk about and look at this ordinance.

The motion **passed** by the following vote:

AYES:	COMMISSIONERS Halliday, Zermeno, Caveglia,
	McKillop,
NOES:	COMMISSIONER Sacks
	CHAIRPERSON Bogue
ABSENT:	Thnay
ABSTAIN:	None



CITY OF HAYWARD

AGENDA REPORT

Meeting Date 4/10/03
Agenda Item 1

TO: Planning Commission

FROM: Carl T. Emura, Associate Planner

SUBJECT: Variance No. PL-2003-0102 –Paige Bennett (Applicant/Owner) – Request to Allow a 7-Foot Fence Along the Side and Rear Property Lines.

The Property is Located at 313 Bridgecreek Way in the Single-Family Residential (RS) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
2. Deny the application, subject to the attached findings.

DISCUSSION:

The property is located in the Twin Bridges residential development. The applicant is requesting to retain a 7-foot high solid board redwood fence located along the side and rear property lines where a maximum 6-foot high fence is allowed. The fence is in the same style as the 6-foot high common property fence and is placed parallel to it.

The applicant has a dog fancier permit that allows her to keep up to 8 dogs on her property and she fosters 4-8 dogs at any given time until they are adopted or can be placed with the SPCA. Some dogs are there for days, others weeks and some may stay for months. The applicant stated that the seven-foot high fence was put up in response to one of her neighbor's concerns about safety. Several neighbors oppose the fence and the fostering of dogs on the property. They feel that the fence is an eyesore and decreases the value of their properties, and if a 7-foot high fence is required to protect them from the dogs, the applicant should not be allowed to foster dogs there.

Staff cannot support this application as there are no special circumstances applicable to the property to justify the variance. Approving the variance would be granting the applicant special privileges not allowed other properties in the vicinity.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alterations of Land Use Limitations.

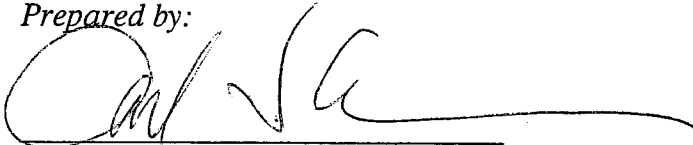
PUBLIC NOTICE:

On, March 31, 2003, a Notice of Public Hearing was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records, the Fairway Park Neighborhoods Association, and the Fairway Park Neighborhood Task Force.

CONCLUSION:

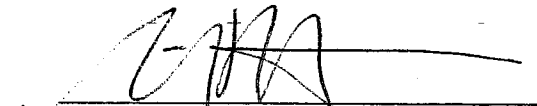
In staff's opinion, the 7-foot fence is visually intrusive to the adjacent properties and the necessary findings to support the variance cannot be made. Therefore staff, recommends that the variance be denied.

Prepared by:



Carl T. Emura ASLA
Associate Planner

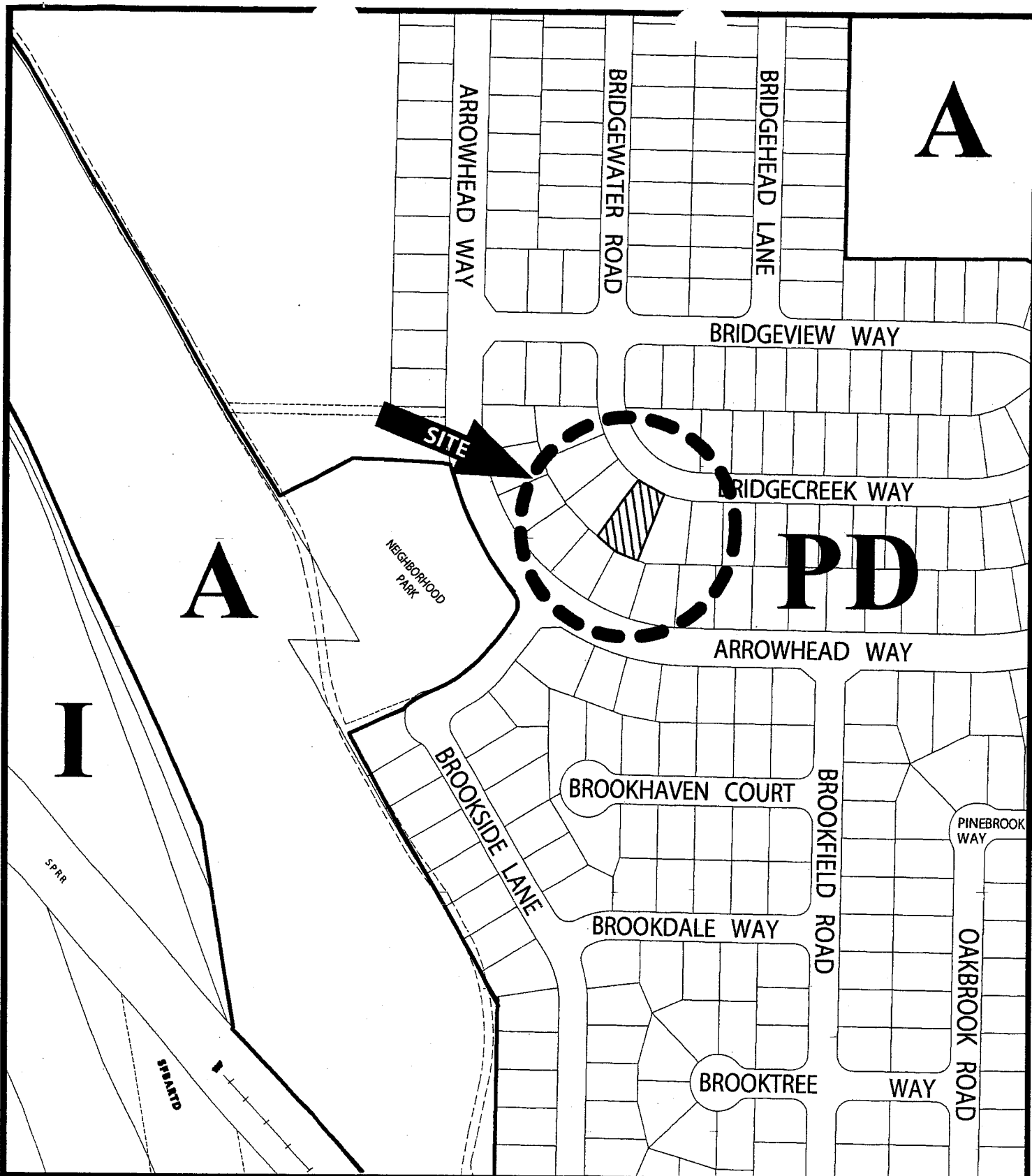
Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Site Plan
- C. Photograph
- D. Emails
- E. Findings for Denial



Area & Zoning Map

PL-2003-0102 VAR

Address: 313 Bridgecreek Way

Applicant: Paige Bennett

Owner: Paige Bennett

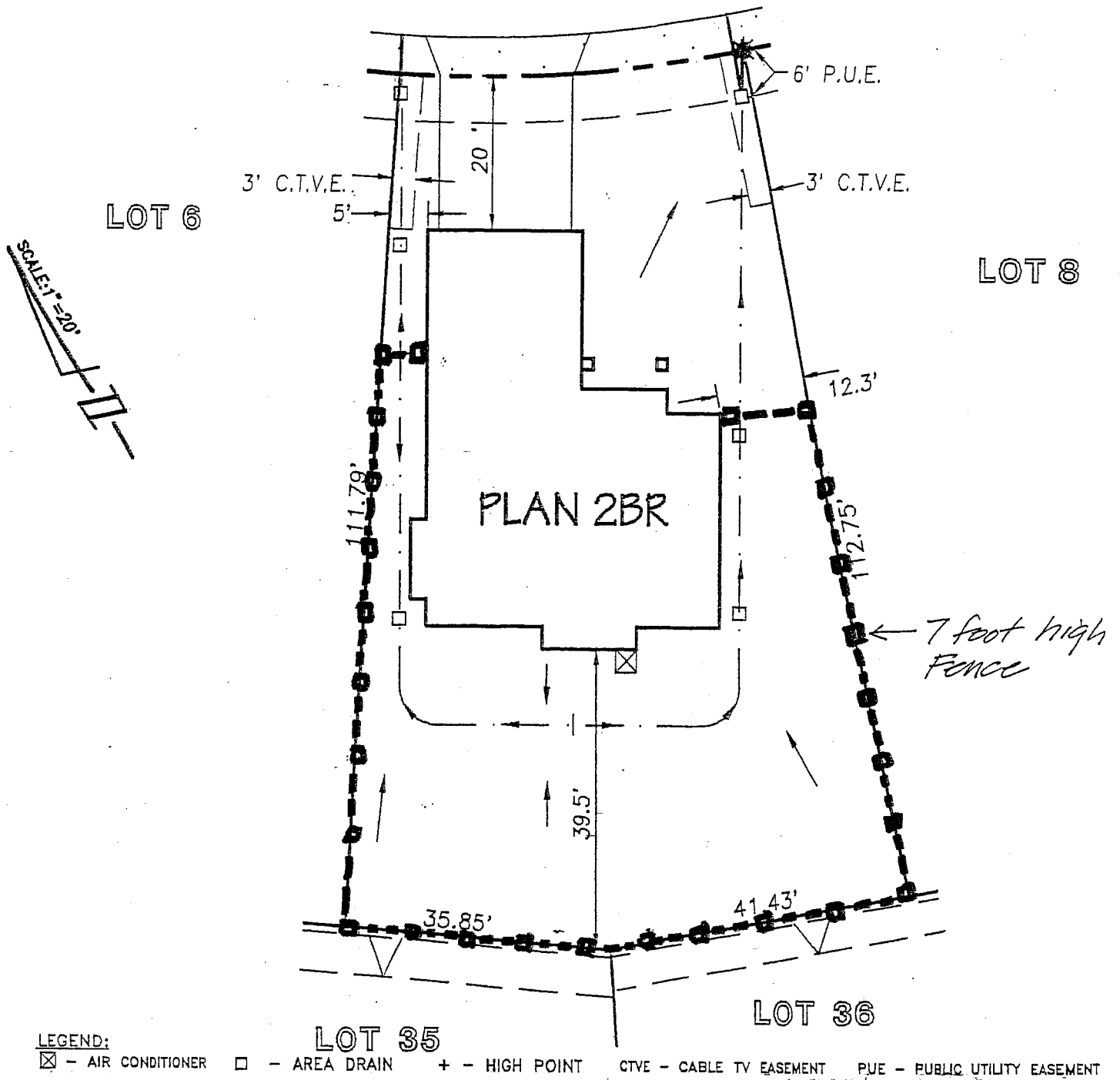
A-Agricultural-ABSA,AB10A,AB100A,AB160A

I-Industrial

PD-Planned Development

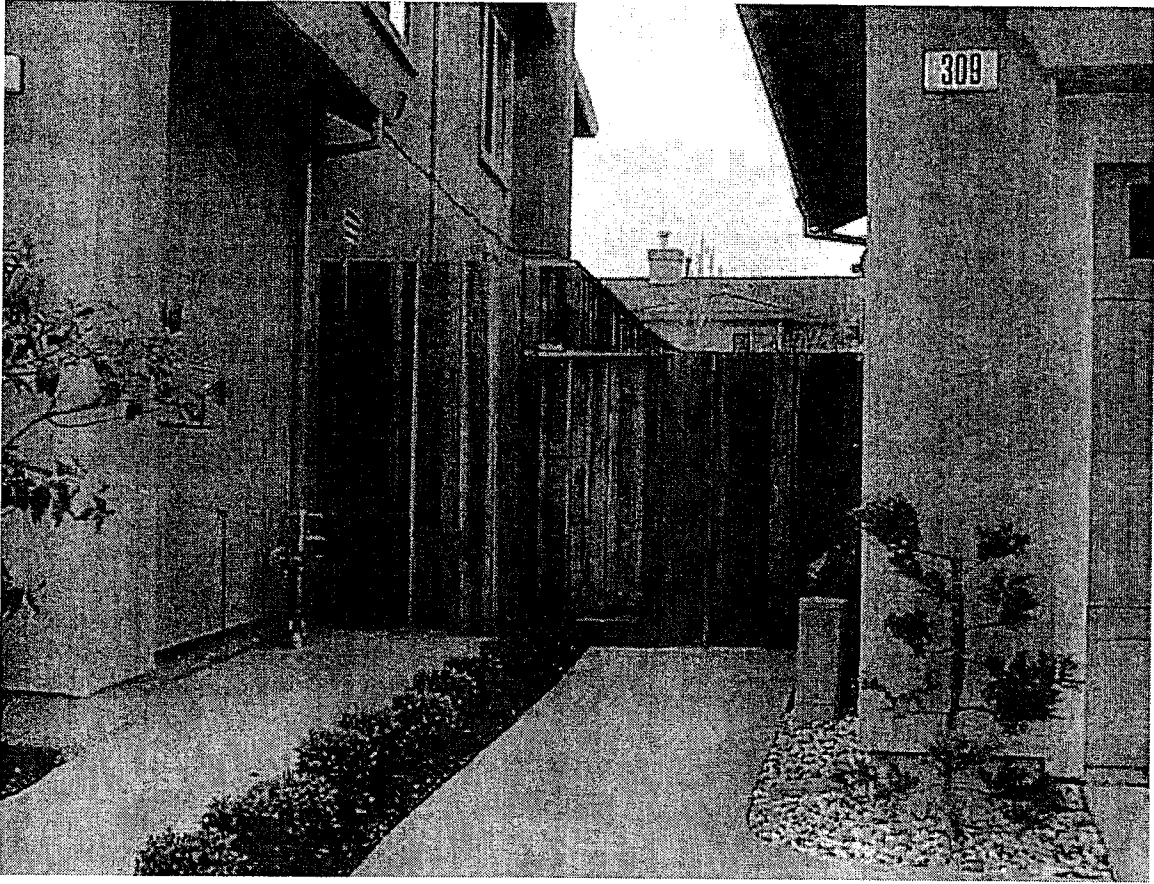


313 BRIDGECREEK WAY



SITE PLAN

Variance No. PL-2003-0102
313 Bridgecreek Way



The seven foot fence is to the left.

Carl Emura

From: DavidV7617@aol.com
Sent: Tuesday, February 18, 2003 2:59 AM
To: Carl Emura
Subject: Regarding PL-2003-0102

Dear Mr. Emura:

RE: PL-2003-0102, Paige Bennett

We are opposed to the above variance as the reason for this fence is to contain anywhere from 6 to 10 dogs at a time for adoption purposes. We feel this effects our property value.

Also, this issue needs to be brought before our property management company as this is also a violation of our CCRs. Our property management company is Massingham & Associates.

We strongly oppose this variance.

Carl Emura

From: Kathleen DeWitt [kdewitt@csu Hayward.edu]
Sent: Friday, February 21, 2003 4:51 PM
To: Carl Emura
Subject: REFERENCE NUMBER IS PL-2003-0102

Hello, I am a resident at Twin Bridges community and it was brought to my attention that one of our neighbors is requesting a variance to retain a 7 ft. fence that they elected to put up. The following are my concerns and reasons for opposing the request:

- 1.) The fence was built to discourage vicious dogs that is kept on the premises from jumping over. They maintain a foster home for unowned dogs and keeps over the legal limit of 4 dogs.
- 2.) I am one of the individuals that witnessed one of these pitbulls jump over the fence which charged me, my husband, and our 2 senior dogs. My husband was able to yell and intimidate the dog back over the fence.
- 3.) We have an Homeowner's Association which include in the CCR's that no fence over 6 feet is allowed. They are also in violation of this restriction.
- 4.) The fence is unsightly. Being a member of this association, allowing the 7 ft. fence would give rise to potential liability for any issues that may occur because of the fence height. This could result in unnecessary legal suits against the association.
- 5.) Allowing the fence would encourage the practice of keeping vicious or unpredictable animals on the premises. The resident has already made reference to the fact that she would not be responsible for the safety of the neighborhood if she were made to lower the height of the fence. In my opinion, she is admitting to keeping vicious animals on her property and not taking responsibility for them.
- 6.) Resale value of the homes located near this residence would be in question. Who would want to buy in the area knowing about the "doggy-foster home" business.

Although the efforts of the resident are commendable, this neighborhood is not the place for this type of practice. Allowing the 7 foot fence would encourage the continuance of keeping unsafe animals in the neighborhood. Allowing the variance will not prevent animals from escaping any more than the legal limit of 6 feet. In addition, having to listen to barking and fighting dogs is annoying. The residents should take responsibility for the choices they make and obey the ordinances and laws that were made to maintain a peaceful environment for everybody.

Respectfully,
Kathleen DeWitt
(510)885-2547

-----Original Message-----

From: MEANBEECH@aol.com [mailto:MEANBEECH@aol.com]

Sent: Friday, March 14, 2003 3:28 AM

To: Carl Emura

Subject: Variance for Paige Bennett

What are the chances of her keeping the fence at the current height of 7 feet?

I am a neighbor and the fence is an eyesore and it also decreases my property value because **her reason** for keeping it that high.

I realize the dogs are not an issue but her reasoning to keep it is because of the dogs and for our safety. Therefore, the fence should have to be removed because it is only up for the above mentioned reason. It is also the only fence in this neighborhood at this height.

Thank you!

FINDINGS FOR DENIAL
Variance No. P1-2003-0102
Paige Bennett (Applicant/Owner)
April 10, 2003

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305, Class 5 (a), Minor Alteration in Land Use Limitations.
- B. There are no special circumstances applicable to the property regarding this variance request in that the property is relatively flat and typical of other properties in this residential development.
- C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that no other properties in the vicinity have been granted a variance for a 7-foot high fence.
- D. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated in that other properties in the vicinity are limited to a 6-foot high fence.

April 29, 2003

The City Council
777 B Street 2nd Floor
Hayward, California 94541

RECEIVED
MAY 05 2003

TRAINING DIVISION

ATTENTION: Carl Emura

RE: Paige Bennett, 313 Bridgecreek Way, Hayward, CA 94544
Dispute over seven foot fence.
City Council Meeting, May 27, 2003

Dear Mr. Emura:

Since I am unable to attend the above mentioned meeting, I would like to request that my letter be read at said meeting.

Paige, as you know, has been active in the rescue and fostering of dogs from the Fairmont Animal Shelter. I can understand that there is some concern about dogs and cats being fostered in a residential area. But a residential area is the only place to foster these animals since the fostering is done by volunteers who live in the local area. Fostering is the only way to give an animal time to recover from a surgery or an illness. In the Shelter they would be put down. It also gives the volunteers a way to better judge the temperament of an animal and the adoptability of that animal.

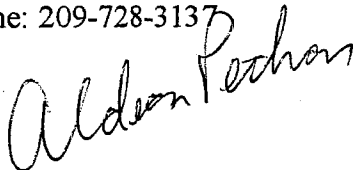
Because of concern for the safety of others and the dogs that she fosters, the seven foot fence was a responsible solution to the concern of neighbors. Some dogs can easily scale a six foot fence but I have not known of many able to hop a seven foot fence.

If I understand correctly, the home owners association met and approved the fence a couple of weeks ago but the City of Hayward has an ordinance against fences over six feet. This ordinance was made several years ago when most of the homes were single story dwellings. I think that today we have a good preponderance of two story homes and people do like to have privacy. I feel that many neighbors would appreciate a seven foot fence to maintain that privacy.

I have worked with Paige for approximately six years and during that time I have always found her to be a concerned and caring individual to others as well as to herself. Please give some consideration to Miss Bennett keeping the fence, enabling her to do a very important and caring service to dogs in need of time to find a good home.

Thank you for your time and consideration.

Aldean Pethan
P. O. Box 1170, Murphys, Ca. 95247
Phone: 209-728-3137



DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

nal
5/8/03

RESOLUTION FINDING THE PROJECT CATEGORICALLY
EXEMPT FROM CEQA REVIEW AND DENYING
VARIANCE APPLICATION NO. PL-2003-0102

WHEREAS, there has been presented to the City Council of the City of Hayward Variance Application No. PL-2003-0102 to allow a seven-foot high fence where a six-foot high fence is required on property located at 313 Bridgecreek Way in a RS (Single-Family Residential) District; and

WHEREAS, the Planning Commission granted the variance at its meeting on April 10, 2003; and

WHEREAS, the matter was appealed to the City Council within the time and manner provided by law; and

WHEREAS, the City Council finds and determines that:

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, pursuant to Section 15305 (a) Minor Alterations in Land Use Limitations.
2. There are no special circumstances applicable to the property regarding this variance request in that the property is relatively flat and typical of other properties in this residential development.
3. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that no other properties in the vicinity have been granted a variance for, or are entitled to maintain, a seven-foot high fence.
4. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated, in that other properties in the vicinity are limited to a six-foot high fence.

NOW, THEREFORE, BE IT RESOLVED that, based on the foregoing findings, the City Council of the City of Hayward hereby grants the appeal and denies Variance Application No. PL-2003-0102.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward